New Zealand Law Journal

Incorporating "Butterworth's Fortnightly Notes."

"Let me speak of the greatest first. The young students and barristers did not wait for the stimulus of compulsion. They went at once. They served, they won distinction, and many died in every part of the world. For there was surprisingly little material left in the profession upon which conscription Acts could, or, in fact, did operate. More than this no one can do, and more need not be claimed. Non carebunt vate sacro."

—THE RT. HON. VISCOUNT BIRKENHEAD, L.C. (1921).

VOL. XVI. TUESDAY, SEPTEMBER 3, 1940 No. 16.

OUR STUDENTS IN WAR TIME.

THE words of the late Viscount Birkenhead above quoted, and said in relation to the war of 1914–1918, are particularly appropriate to our own law students and young members of the profession at the present time. In them is the stuff of heroes. They have shown the same spirit, careless of consequence to person and career, which was shown by all the young lawyers of the generation of 1914–1918. In them, and in their willing spirit of self-sacrificing patriotism, their brethren in the law, whom the years, perforce, condemn to impatient inactivity in the national cause, take justifiable pride. In the Roll of Honour, especially of the Air Force, already some of our students and young lawyers have earned an imperishable fame. And, of those of our fellow-practitioners whose sons are now of that very gallant company, we ask the privilege of sharing their sorrow and their pride.

In these circumstances, we again approach the *Students' Supplement*, which represents, in war-time conditions, the literary work of those awaiting the summons to camp and of those who are, as yet, not of an age to be accepted for military duty.

In each of the last two years, we have published a "Students' Supplement," which has embodied the collective efforts both of law students and of those in the profession who have been qualified for not more than seven years. In 1938 and 1939 contributions were on a competitive basis and were selected by an Editorial Board, consisting of representatives of the University Teaching Staffs, the profession, and the Auckland, Wellington, and Christchurch law students' bodies. The interest and enthusiasm which greeted the appearance of the first and second issues were so encouraging, that, in days of peace, the third Students' Supplement would have been awaited with cheerful anticipation. Fate, however, which had previously displayed a benevolent neutrality, now entered the lists against the project. Accordingly, the total results of this year's labours are neither so extensive nor so varied as last year's students might have hoped; and, owing to the thinned ranks of potential contributors, and the spirit of the times, the competitive principle was, perforce, abandoned.

The restricted effort of this year, however, has not been without its alleviating factors. In the first place, it is doubtful whether, even if twice as many articles had been supplied, we could have published them in their entirety; for, like other periodicals, the NEW ZEALAND LAW JOURNAL feels acutely the effects of the paper-shortage. Secondly, we feel that our readers will agree with us that the comparative paucity of material on this occasion is not accompanied by any degeneration in quality.

We have good reason to believe that there are not a few law students and young practitioners who, had they not been in one branch or another of the fighting services, would have been potential contributors to the Students' Supplement. If, as we hope, some of them are able to read this issue in strange and distant places, the LAW JOURNAL wishes them to know that the thoughts of their fellows in the profession are often with them. For many of them are now overseas, though others are still on the shores, on the seas, and in the skies of New Zealand. To them all we extend our greetings. As we salute their valour, one and all we remember with gratitude and with pride.

SUMMARY OF RECENT JUDGMENTS.

SUPREME COURT. Auckland. 1940. August 2, 16. *Fair*, J.

In re **SIMS (DECEASED).**

Probate and Administration—Practice—Caveat—Caveat lodged after Motion for Probate minuted "Granted" but before Probate sealed—Whether Caveat lodged previous to "administration being granted"—Administration Act, 1908, s. 27—Code of Civil Procedure, R. 531.

After a motion for probate in common form had been filed and minuted by the learned Judge "Granted," but before probate had been sealed, a caveat was lodged. The solicitor for the applicants for probate sought to seal the probate. The question whether the caveat was effective under s. 27 of the Administration Act, 1908, and whether the probate should be sealed was argued before the learned Judge who reserved his decision. In consequence, the probate was not sealed within a month from the date of the application for probate and by reason of R. 531M of the Code of Civil Procedure, application had to be made for a regrant, and the caveat became operative in respect of such application.

In re Oddy, (1895) 21 V.L.R. 85; *In re Hall*, (1900) 26 V.L.R. 555; *In re Bishop*, (1892) 18 V.L.R. 759, and *Herdman* v. *C. Dickinson and Co., Ltd.*, [1929] N.Z.L.R. 795, G.L.R. 449, considered.

Quaere. Whether the caveat had been lodged previous to the "administration being granted."

Counsel: *Wiseman*, for the applicant; *Burns*, for the respondent.

Solicitors: *Matthews and Clarke*, Auckland, for the applicant; *Wiseman Bros.*, Auckland, for the respondent.

SUPREME COURT. Wellington. 1940. July 5; August 2. *Myers*, C.J.

GARRATT v. GARRATT.

Divorce and Matrimonial Causes—Alimony and Maintenance—Deed of Separation—Payment for Maintenance—Weekly in Advance—Interpretation—"Wife may and shall henceforth during the life of the husband live separate from him as if she were unmarried"—No Term during which agreed Payments to be made specified—Whether Deed operative after Dissolution of Marriage.

A husband and wife separated. The deed of separation provided, *inter alia*, as follows:

Clause 1. The wife may and shall henceforth during the life of the husband live separate from him and as if she were unmarried . . .

Clause 3. The husband shall permit her to have the free use occupation and enjoyment of all that his property at Brooklyn previously the matrimonial home together with the free use and enjoyment of the furniture and chattels therein and subject as aforesaid shall pay to the wife for her use and for the maintenance of the said child the sum of One pound five shillings (£1 5s.) weekly in advance . . .

On a preliminary question arising on a petition for permanent alimony,

Cresswell, for the respondent; *Watterson*, for the petitioner.

Held, 1. That Cls. 1 and 3 must be read together, and that the husband's covenant was to allow the free use of the Brooklyn property and to pay the weekly sum of £1 5s. during the joint lives of the parties; and therefore, Cl. 3 continued to operate after the wife had obtained a decree absolute in a divorce suit based upon three years' separation under the deed.

2. That, on a petition by the husband for an order cancelling or varying the post-nuptial settlement made on the wife by the said deed, the onus was upon the husband to show that the circumstances were such as to entitle him to have the deed, assuming it to be a settlement, cancelled or varied.

Charlesworth v. *Holt*, (1873) L.R. 9 Ex. 38, applied.

The question of the cessation of the operation of a deed of separation (containing no expression of the period for which the provisions were to operate) upon the dissolution of a marriage, based upon the three years' separation under such a deed, discussed but not determined.

Watts v. *Watts*, [1933] V.L.R. 52, referred to.

Solicitors: *Watterson and Foster*, Wellington, for the petitioner; *O'Donnell, Cresswell, and Cudby*, Wellington, for the respondent.

SUPREME COURT. Timaru. 1940. July 16, 30. *Northcroft*, J.

DRUMMOND v. DRUMMOND.

Divorce and Matrimonial Causes—Alimony and Maintenance—Permanent Maintenance—Husband's Income not Warranting Order but possibility of Improvement—Whether Petition for Permanent Maintenance should stand over, or Order be made for a Nominal Sum to preserve Wife's Rights—Divorce and Matrimonial Causes Act, 1928, ss. 33, 41.

While, under s. 33 of the Divorce and Matrimonial Causes Act, 1928, relating to alimony and maintenance, finality is intended with regard to an order for a sum to be received, the provisoes to subs. 2 indicate that finality is not contemplated in respect of orders for weekly or monthly sums.

In the case of weekly and monthly sums, where the present circumstances do not warrant any order, but there is a possibility of improvement of the husband's income, an order for a nominal sum may be made to preserve the wife's rights upon that contingency.

Stephen v. *Stephen*, [1931] P. 197, referred to.

On the facts, the ground of the divorce being desertion by the wife, who had left her husband as she desired personal and economic independence and who was earning her own living, while the earnings and financial resources of the husband were only modest, the circumstances of the case did not justify either the making of an order for a nominal sum, or allowing the petition for alimony or maintenance to stand over, so that the application might be reviewed later, if necessary.

Geange v. *Geange*, [1917] G.L.R. 512; *Martin* v. *Martin*, [1923] G.L.R. 441, and *Colgan* v. *Colgan*, [1937] N.Z.L.R. 930, referred to.

The petition was accordingly dismissed.

Counsel: *M. A. Raymond*, for the petitioner; *Ulrich*, for the respondent.

Solicitors: *Weston, Ward, and Lascelles*, Christchurch, for the respondent; *Raymond, Raymond, and Tweedy*, Timaru, for the petitioner.

Case Annotation: *Stephen* v. *Stephen*, E. and E. Digest, Supp. Vol. 27, No. 5459a.

SUPREME COURT. Wellington. 1940. July 4; August 14. *Smith*, J.

POBAR v. BARTON GINGER AND COMPANY, LIMITED.

Industrial Conciliation and Arbitration Acts—Award—Whether Employer not cited as Representative Employer in Proceedings resulting in Dominion Award bound by such Award by Retrospective Legislation—Industrial Conciliation and Arbitration Act, 1925, s. 58—Industrial Conciliation and Arbitration Amendment Act, 1937 (No. 2), s. 5—Industrial Conciliation and Arbitration Amendment Act (No. 2), 1939, s. 6.

Section 6 of the Industrial Conciliation and Arbitration Amendment Act (No. 2), 1939, has the effect of altering retrospectively the vested rights of employers and employees by applying the effect of s. 5 of the Industrial Conciliation and Arbitration Amendment Act, 1937 (No. 2), to a Dominion Award made pursuant to an application under s. 58 of the Industrial Conciliation and Arbitration Act, 1925.

As a result, where an industrial association of employers or representative employers are parties to an application under s. 58 which has resulted in a Dominion award, all employers engaged in the industrial districts in any industry to which the dispute relates, are made parties to the application and are to be deemed to have been made parties to the proceedings before the Court of Arbitration which resulted in the award, and are subject to the rights and liabilities created by such award.

Wilson v. *Kibby*, (1939) 39 Book of Awards, 1343, referred to.

Counsel: *Arndt*, for the appellant; *A. J. Mazengarb*, for the respondent.

Solicitors: *Ongley, O'Donovan, and Arndt*, Wellington, for the appellant; *Mazengarb, Hay, and Macalister*, Wellington, for the respondent.

Students' Supplement

TO

The New Zealand Law Journal

No. 3. TUESDAY, SEPTEMBER 3, 1940.

" There is a word which our enemies use against us—Imperialism. By it they *mean the spirit of domination and the lust of conquest. We free peoples of the Empire cast that word back in their teeth. It is* they *who have these evil aspirations.* Our *one object has always been peace: peace in which our institutions may be developed, the condition of our peoples improved, and the problems of government solved in a spirit of good will. This peace they have taken from us, and they are seeking to destroy all that we have striven to maintain."*

—H.M. THE KING, Message to the Empire: May 24, 1940.

THE WAR AND THE LAW STUDENT.

AT a time when most law students are preparing themselves in earnest for the November examinations, it must sometimes occur to them to compare with the conditions of study to-day the peaceful and relatively stable circumstances under which their predecessors laboured in the not far distant past. It is doubtful whether any time is less favourable for intellectual effort than a time of total war, and it is hardly surprising if thoughts turn occasionally from the study of municipal law, past or present, to the wider sphere of world politics and the issues now being decided by force of arms. Can international law be said to exist, and what are its chances of survival or revival in the future? The complete break-down of the League system of collective security; the resort to arms by Germany in the face of an almost unanimous world opinion; and, perhaps most of all, the flagrant, persistent and seemingly successful violations of international law by the dictator states—all this combination of circumstance has not failed seriously to question in many minds the possibility of maintaining the supremacy of law in international affairs. To the students of law, these considerations are real. The subjects with which he is concerned do not, in the main, have any international basis; but he realises that ultimately all state law, whether civil or criminal, depends for its effective administration upon the existence of reasonable international stability. How is that stability to be achieved, and how should the lawyer concern himself with it?

The problem is analagous to, but obviously more extensive than that of maintaining and enforcing law within a state. Some jurists think that the instrument for upholding state law need not be more than the constraint of public opinion. On general principles they argue that force as an instrument for the coercion of mankind is at most only a temporary and provisional incident in the development of a perfect civilization; and accordingly that the employment of force within a state must increasingly be limited in favour of the sanction of public opinion. How far these theorists are prepared to carry their views is far from clear. Could the most sanguine among them envisage in fifty or even one hundred years' time the disbandment of the Police Force? Is the public censure felt by those who need its influence most? And if such objections can be levelled at the theory as applied to the state, what must be their validity in the international sphere? It is one thing to insist that within a state, homogeneous and law-abiding, the Police Force be reduced to a minimum and that public opinion be relied on to do the rest; it is quite another to theorize about the possibility of maintaining rational order and security in relations between states solely by means of non-aggression pacts, international pacifist movements and pious declarations that "no one wants war." Post-war history has amply proved—if proof were needed—that one fully armed aggressor nation can do more than ten states who though together are able, individually are unwilling to resist it. But where effective resistance is collectively offered, as is now being offered by Great Britain and the Empire, the aggressors realize the magnitude of their task. Is it too much to say that an earlier organization of the forces of defence would have made them shrink from it?

The removal of national grievances and the revision of obsolete treaties no doubt constitute the greatest difficulty. The fact that the machinery to that end provided for in the League Covenant was never worked, shows that nations continue to be unwilling to bargain away what they consider to be paramount national interests. How far is this obstacle insurmountable? It may be that the answer to the question will remain for several years an academic one and that when eventually it does become topical, world circumstances will give it a very different setting. However that may be, the ablest brains will assuredly then be required to work out a system which will not again permit Europe and the World to commit hari-kari. One thing, we submit, is certain. If anything in the nature of a World Court for the settlement of international disputes is then devised, a full measure of co-operation will be required from the various states to make its decrees effective. Such a Court, with that backing

behind it, could at least provide stability; if it could not provide immediate "justice" for the vanquished, that result would surely be preferable to the anarchical state of affairs witnessed from 1935 to 1939, when self help operated unopposed. We can, therefore, only hope that when the stage is once again set for a peace conference, Britain will possess both a stiff backbone and a sensitive conscience. The important thing, however, is that the Empire never allow itself to imagine that by unilateral disarmament or the concession of vital interests in favour of a neighbour state it can "appease" that neighbour, win its goodwill, or in any certain manner assist international security.

If the foregoing reasoning be sound, it should be abundantly clear to the lawyer that in a practical world complete collective security offers the only reasonable hope of international stability. How, then, should the lawyer act? He should, we submit, use his influence as a citizen of the Empire in seeing to it that this Dominion is able, both now and in the years to come, to play her part more effectively than in the past—and, if necessary, at the expense of internal development and social progress—in contributing the fair share of her resources and her manpower to the common cause of world order.

—H. J. EVANS, LL.B.

PROPOSALS FOR INSURANCE.

Newsholme Brothers v. Road Transport and General Insurance Co.

By S. J. SHAYLE-GEORGE, LL.B.

The doctrine that an insurance company's agent or officer, when he interrogates the proposer and fills up his answers in the proposal form, is acting as the agent of the proposer, is surely one that ought not to be taken an inch beyond actual authority. At the moment the actual authority is *Newsholme's* case and in this article it is proposed to examine the precise effect of that case. The facts were that the insurance company's officer, who had been invited to come and arrange the insurance, filled in the proposal from information supplied by the proposers; but although he was given correct information, he filled in certain answers wrongly. The answers in question were as to previous insurances, and whether any policy had been cancelled or increased premium demanded, and as to previous accidents; and the company's officer, though given the true facts, filled in wrong and favourable answers. There was no evidence as to what the true answers should have been, because the arbitrator had made no finding of fact on the point except as above stated; but it is impossible not to infer that the proposers stated that they had had a policy or policies cancelled, or a demand for increased premium, or some previous accident or event that might or might not be properly regarded as an "accident."

It may first be observed that the doctrine above referred to is highly artificial from a commercial point of view, and bears no practical relation to everyday facts. No lay proposer can ever have regarded the company's officer as his agent for any purpose. He would regard any such statement as a contradiction in terms. But it has been held, and rightly held, that the company's officer has no ostensible authority either to fill in or to supply the answers; and it follows that *quoad hoc* he must act as the proposer's agent. The question is whether his agency for the proposer extends beyond these functions, and if so how far. This question has become material in cases where the proposer makes a correct statement of fact, and the company's officer, purporting to act upon it, writes down an incorrect answer. That is, the true fact is knowledge acquired by the company's officer; and the question is whether his knowledge is imputable to the company.

It is submitted (though had it not been for certain dicta in *Newsholme's* case I should have asserted instead of submitting) that the knowledge will be imputable to the company if its officer acquired the knowledge either when acting as the company's agent (and not as the agent of the proposer) or in circumstances in which it was his duty to communicate his knowledge to the company: *1 Halsbury's Laws of England*, 2nd Ed., p. 291, para. 477. As to whether the officer acquires the knowledge when acting as the company's agent, it must be remembered that he certainly acts as the company's agent *except so far as it is established* that he acts as the agent of the proposer. What, then, is the scope of his agency—his implied, not express, agency—for the latter? The learned Judges who decided *Newsholme's* case would have to answer, if pressed to justify their conclusions, that the proposer makes his true statement of fact to the company's officer, and authorizes him to interpret it on the proposer's behalf in whatever way he likes. But it is implicit in that contention that the company's officer is to interpret not only the answer, but the question: what the contention amounts to is to say that the proposer leaves it to the company's officer to decide, *as the proposer's agent or adviser*, what will be a sufficient answer to the company's question. A Court ought surely to be suspicious of that. Suppose a lay proposer were asked whether that was in his mind, and denied it, who would disbelieve him? And suppose the company's officer were asked whether that was in his mind, and affirmed that it was, and whether he thought that was what was in the proposer's mind, and he affirmed that he thought so, which of us would believe him? Finally, let us question the general manager. Should we believe him if he said that he had no doubt that this was what was in the minds of his officer and the proposer?

It would seem, therefore, that the company's officer acquires the fatal knowledge as the company's agent, for the reason that he cannot rationally be supposed to

acquire it as the agent of the proposer. But if he does not acquire the knowledge as the company's agent, it would appear to be beyond argument that he acquires it in circumstances that make it his duty to communicate it to the company. His duty most obviously is to communicate to the company any knowledge he has that is material to the risk. If it is not his duty to communicate his knowledge that an answer is incorrect, the company is in the position of asserting that it employs him to lie low, whenever possible, so that the company may get the premium and refuse to pay under the policy; and such an assertion surely cannot lie in the company's mouth.

Apart, therefore, from *Newsholme's* case, it must be clear upon principle that, in the circumstances now contemplated, the company will be estopped from setting up, as a breach of warranty, the incorrect answer that its officer knows to be incorrect. How far, then, has that case altered the law? So long as it remains authority, the law must be taken to be that every fact stated to the company's officer as material to any answer to be written on the proposal form by him, is communicated to him as the proposer's agent solely; and moreover, that he is not, and cannot be, under any duty to inform *his employer* that he knows any answer to be wrong. To state that proposition is surely to refute it.

This, however, is not the only unsatisfactory aspect of *Newsholme's* case. It is stated in effect that the knowledge of the company's officer that an answer is incorrect, and as to the true fact, cannot be imputed to the company because, if he fills in the proposal wrongly, he is acting in fraud of the company. But upon the facts of the case there was no suggestion of fraud on the part of the proposer; and it is well established that a principal cannot set up his agent's fraud unless there is complicity on the part of the other party. To sum up my comments on this decision, it is submitted:

(*a*) That it was wrong on the particular facts.

(*b*) That it wrongly laid down, as a general proposition, that the company's officer, filling in the proposal, is the proposer's agent so as to be unable to acquire knowledge as the company's agent; whereas it is manifest that the scope of his agency depends on the facts in each case, and that in most cases, and in *Newsholme's* case, the facts do not establish so extensive an agency.

(*c*) That it wrongly laid down, as a general proposition, that the company's officer's knowledge is not imputable because, in filling in the wrong answer, he acts in fraud of the company; whereas it is manifest that fraud on the part of the proposer must be proved before the company can take up any such position.

(*d*) That it ignores the rule that an agent's knowledge is imputable to his principal when acquired, whether as agent or not, under circumstances in which it is his duty to communicate it to his principal.

THE STUDENTS' SUPPLEMENT.

With this number the Students' Supplement to the NEW ZEALAND LAW JOURNAL attains its third issue. Although its size and the range of its articles are not what we had hoped for, publication in its present form was thought preferable to the abandonment of a journal which, since its inception in 1938, has not only attracted interest among the profession in New Zealand, but has also brought favourable comment from overseas.

It should once more be explained that although, for lack of a better name, this production is called a "Students' Supplement," those eligible to contribute include, as well as students, all persons who have qualified in law within the last seven years.

The Editorial Board this year consisted of Professor Williams, of Victoria University College, representing the teaching staffs of the four Colleges; Mr. I. H. Macarthur, representing the profession; and Mr. M. H. Vautier, representing the Auckland, and Mr. E. M. Hay, the Christchurch, Supplement Committees. To these gentlemen we extend our thanks. In particular, we acknowledge our gratitude to Professor Williams, whose consistent enthusiasm and ready help have largely kept the Supplement alive. Finally, we would thank Messrs. Butterworth and Co. (Aus.) Ltd., for again undertaking the publication of this Students' Supplement, and the Editor of the NEW ZEALAND LAW JOURNAL for the assistance and encouragement which he has always so willingly afforded us.

As was to be expected, the war has deprived us of some of our most likely would-be contributors; but we feel that that fact is not entirely responsible for the decline in the number of articles, or for the comparative lack of interest displayed. If the Supplement is to justify its existence in the future, it must, we think, have the full support of at least a strong minority of law students. Up till now much of the direction and—as was perhaps inevitable—most of the organization has come from a small group of students in the capital city. This is to no little extent regrettable, and we record our hope that when the Supplement once again appears it will represent more truly a Dominion-wide effort.

—H. J. EVANS,

For the Wellington Committee.

THE CASE OF THE ASAMA MARU.

Enemy Nationals on Neutral Ships.

By J. W. TILL.

On the afternoon of January 21, 1940, as the Japanese liner *Asama Maru* was returning to Japan from the United States, she was stopped by a British cruiser when only thirty-five miles from her home coast and ordered to hand over twenty-one German passengers. When the captain of the *Asama Maru* refused to comply, the passengers were forcibly removed. The Germans were all of military age and had previously been attached to the mercantile marine service of their country. Japan immediately protested that a breach of international law had been committed and demanded the return of the German nationals. After the interchange of several notes between the two Governments nine of the prisoners were released on the grounds of their relative unsuitability for military service. Britain, however, still insisted that her action in removing the Germans was justified by existing rules of international law. The official documents relating to the incident are collected in *Tokyo Gazette* (March, 1940) 356, *et seq.*

The main conflict of opinion between the British and Japanese Governments can shortly be stated as follows: Britain claimed that there had existed for centuries a right enabling belligerents to take enemy nationals out of neutral ships without seizing the ship and submitting the matter to Prize Courts, that subsequent treaties evidenced such rights and were concerned only with the limiting of this wide general principle. On the other hand Japan maintained that no such general right had ever existed and that such treaties as had been made conferred rights, which hitherto had not existed, as exceptions to a general rule against removal.

Britain's claim that it was formerly a common practice for a belligerent to remove enemy persons from neutral ships without taking the ships into port for adjudication, but that this practice was subsequently regulated by treaties limiting the right of removal to persons in the service of the enemy is expressly supported by Dana in a note to Wheaton on this topic. Dana gives a list of treaties of this nature from 1675 to 1851 (see Carnegie Endowment Edition, p. 549 ff).

On the other hand fairly convincing evidence can be adduced to show that this view was not actually acceded to by Britain. If Britain did not recognize a general right of removal, then the treaties must have established a new rule of international law enabling a belligerent to remove only those enemy nationals who were members of the military forces. An exception to a general rule should be narrowly construed.

The famous case of the *Trent*, although variously interpreted by text-writers, may be cited here in support of the argument that Britain did not recognize a general right of removal. In 1861, during the American Civil War, the British steamer *Trent, en route* from Havana to England, was stopped by an American man-of-war and forced to hand over Messrs. Mason and Slidell, who had been appointed diplomatic representatives of the Confederate States to England and France. Great Britain demanded their immediate release. Mr. Seward, for America, contended that the prisoners were contraband of war and as such liable to seizure, but admitted that the captain of the man-of-war had been guilty of an error in procedure in not bringing the *Trent* into port for adjudication of the matter by a Prize Court. For this reason the prisoners were released.

Earl Russell, for Britain, while basing his case mainly on the immunity of diplomatic agents, did not refute the suggestion of Mr. Seward that enemy nationals could be treated as analogous to contraband and impliedly recognized this possibility. It is to be regretted that Earl Russell did not reject this theory, as, if it is to be upheld, an impossible position arises. It is confidently suggested that modern authority supports the view that enemy nationals cannot be classed as contraband.

Notwithstanding the ground on which America's decision to release the two Confederate agents was based, it is submitted that the incident does lend support to the proposition that at that time Britain did not recognize a general right in belligerents to seize enemy nationals on neutral vessels.

The representations of the British delegates at the London Naval Conference in 1909 show the attitude of Great Britain at that time. Although several continental nations represented at the Conference were inclined to the view that the removal of enemy nationals from neutral ships could be claimed and enforced as of right, the British delegates pointed out that no such general right had hitherto been recognized by Great Britain: see the *Declaration of London*, Carnegie Endowment Edition, p. 244, para. 20. This attitude receives considerable support from the text-writers. Thus Dr. Lushington in his *Manual of Prize Law* published in 1866, which purports to be a true statement of Britain's attitude at that time, denies the existence of a general right of removal without Prize proceedings: see 1886 and 1884 Ed., para. 195. Holland took the same view: see *Manual of Naval Prize Law*, 1884 Ed., para. 94.

It is quite clear that Hall regarded the case of the *Trent* as supporting his contention that "if . . . belligerent persons, whatever their quality, go on board a neutral vessel as simple passengers to the place whither she is in any case bound, the ship remains neutral and covers the persons on board with the protection of her neutral character": *Hall's International Law*, 8th Ed., p. 832. Consider, too, the opening statement of Oppenheim on this subject: *Oppenheim's International Law*, 5th Ed. (Lauterpacht) Vol. 2.

On a consideration of the authorities therefore, it appears that Japan's claim that there did not exist a general right to remove enemy nationals from neutral vessels can be better substantiated than the claim of Great Britain to the contrary. Accordingly, unless Britain's act can be justified by subsequent treaty or custom, it seems that the removal of the German

sailors from the *Asama Maru* was a breach of international law.

We are now in a position to consider the provisions of the unratified Declaration of London, which resulted from the London Naval Conference of 1909, relevant to this discussion. Britain's argument that the Declaration was never ratified and therefore has no legal effect is unanswerable; but it will not be denied that a Declaration of this type must have considerable force as being declaratory of recognized customary rules of international law. If acquiescence in its terms by a majority of states can be shown then we have gone a long way towards establishing the general recognition of the principles enunciated therein. Cases arising out of the Turco-Italian war support the Japanese view that the Declaration of London is recognized as evidence of International Law. See, for instance, the cases of the *Africa* (1912) and the *Manouba* (1912).

Article 45 of the Declaration specified cases in which a neutral vessel rendered itself liable to condemnation while art. 47 provided for cases where the circumstances did not justify condemnation. The latter article provided: "Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war even though there be no ground for the capture of the vessel."

In the present dispute Britain claimed that the words "embodied in the armed forces of the enemy" in art. 47 above, and the words "military persons and effectively in the service of the enemy," which was the phrase most frequently used in the earlier treaties previously mentioned, referred not only to those nationals of a belligerent country actually under arms, but extended also to those able-bodied nationals who were liable as reservists to serve and were on their way to do so. It was contended that, although the phrase used in the earlier treaties was adequate because of the relatively small professional armies that then existed, the present European conscription laws, affecting as they do every male person fit to bear arms, rendered the earlier definition no longer suitable. The definition should accordingly be extended by analogy to the prior existing custom to include all persons liable to serve. This is a very powerful argument, but it is submitted that the balance of authority supports the conclusion that Britain has not in fact recognized this extension of an old rule.

Britain drew Japan's attention to the fact that Germany was making an organized attempt to secure the return of mercantile marine officers and men, and was so anxious to obtain their services that they were being despatched by the long and expensive route *via* Japan and Siberia. Of the fifty Germans on board the *Asama Maru* only twenty-one were removed. These persons were men skilled in the use of diesel engines whose technical knowledge would make them very desirable recruits for the submarine service.

The interpretation placed by Great Britain on art. 47 of the Declaration of London can be better supported than her claim that there existed a general right to remove enemy nationals from neutral ships. During the Great War, except for a short period at the commencement, the Allies regularly removed from neutral vessels subjects of the Central powers liable to military service; in many cases without objection by the neutral power. Of the protests raised, only those of America were heeded, and even in these cases Britain still claimed that she had acted within the rules of international law. However, the Allies' action was partly based on reprisal, which weakens its force as evidence of custom.

The decision of the French Prize Court in *The Federico* (1915) is quoted by the American writer, Hyde, in support of his belief that "an enemy person who as a reservist, or in response to the summons of his country to serve its colours, takes passage on a neutral ship *en route* for a belligerent destination, may be fairly deemed to be embodied in a military force for purposes of interception": *Hyde's International Law*, Vol. 2, p. 819.

In *The Windbar* (1914), and *The China* (1916), nationals of the Central powers removed by the Allies from American ships were released on the demand of the United States Government "as a friendly act" but Britain reserved the question of the principle involved. In *The China*, Sir Edward Grey declared it to be of the greatest importance for a belligerent to intercept on the high seas not only military members of the opposing armies found travelling on neutral ships, but also agents sent abroad and persons whose service is enjoyed without any commission: see *Hall's International Law*, 8th Ed., p. 835. He stated further that in the case of enemy reservists returning home to join their mobilized armies, His Majesty's Government cannot perceive that even the narrowest construction of existing law supports the contention that their arrest on board neutral ships is inadmissible: see *American Journal of International Law*, July, 1939, p. 645.

Weight is given to Japan's assertion that art. 47 refers only to those persons actually belonging to the armed forces at the date of their presence on a neutral ship by the fact that this interpretation is placed on the phrase *incorporés dans la force armée de l'ennemi*, which occurs in both articles, by the notes to art. 45: see Carnegie Endowment Edition of *The Declaration of London*, p. 163. It is true that this interpretation was decided on "the spirit of conciliation" and that art. 45 relates to cases where the neutral ship is liable to seizure for unneutral service, but according to a well-known principle of construction the phrase in question should bear the same meaning in the later article as in the earlier one, unless it is clear from the context that the contrary was intended. Neither in art. 47 nor in the notes thereto is there any indication that the phrase should be differently interpreted.

Thus it appears that if Britain admits the adoption of the principle laid down by art. 47 it is likely that the narrower Japanese interpretation has the soundest basis in law. The exception laid down by the article, which is to the same effect as the earlier treaties, should be strictly and narrowly construed as are all exceptions to a general rule. On the other hand, if, in spite of *The Africa*, cited above, Great Britain maintains the Declaration is of no effect (which was in fact the attitude taken up) then her action in removing the Germans from the *Asama Maru* cannot be justified because of the view, held by her prior to the Naval Conference of 1909, that there existed no general right of removing enemy nationals from neutral ships without Prize proceedings.

Can it be said that cases arising out of the Great War have altered the position? It is submitted not.

With regard to the cases relied on by Britain in support of her contention that reservists are embodied in the armed forces of the enemy, it is very significant that her actions really amounted to reprisals: see *London Gazette*, November 3, 1914. It is certain that action taken by way of reprisal cannot be adduced to show an existing rule of law—rather the reverse. Lauterpacht's comment on the British action is: "The legality of this measure of reprisals by the Allies may well be doubted": *Oppenheim's International Law*, Vol. 2, 5th Ed., p. 704*n*.

It seems, therefore, that, on an impartial consideration of the authorities, reservists cannot be removed from neutral vessels unless the vessel itself is liable to seizure for unneutral service. Many writers support this view: see, for example, *American Journal of International Law and the World War* (1920), Vol. 2, pp. 369–370, where it is pointed out that Bentwich, Higgins, Dupuis, Bluntschli, Perels, Marquardsen, Lawrence, Kleen, Montague Bernard, and many others take the view that reservists are not within the category of capturable persons.

In conclusion, it appears that despite the view taken by Hyde, the weight of authority is on the side of Japan in the dispute under consideration. It may well be, however, that in a short time world opinion will insist on the inclusion of wartime reservists within the classes of those persons regarded as being embodied in the service of a belligerent. It would be reasonable to include these persons by analogy to members of the armed forces under the changed conditions of totalitarian warfare. In modern warfare, unlike the battles of the last century, it is likely that every able-bodied person of either sex, having a hostile destination, will offer some measure of direct help to the State of allegiance on reaching its territory.

CONTRACTS BY STATUTORY BODIES.

A Consideration of Wairoa Electric-power Board v. Wairoa Borough.

By W. G. Smith.

In accordance with the terms and conditions of a contract between them, X. supplies goods and services to Y., a corporate body duly constituted under the Municipal Corporations Act, 1933. The contract between the parties having come to an end, X. advises Y. by letter that he will continue to supply goods and services on the same terms and conditions as had existed under this expiring contract. Receipt of this letter is formally acknowledged by Y. who continues to accept goods and services from X. When an account based upon the terms of the old contract is rendered in respect of goods and services supplied since the expiry of the old contract, Y. denies liability. These were the facts in *Wairoa Electric-power Board* v. *Wairoa Borough*, [1937] N.Z.L.R. 211. What are the rights of the parties?

The question is: Was there a valid contract between X. and Y., in which X.'s letter advising that he would continue to supply goods and services at the old rate was the offer, and Y.'s continued acceptance of these goods and services was the acceptance of this offer, and under which Y. would be liable to pay for the goods and services supplied at the rate specified in the contract which had terminated, or at any other rate? This specific question raises a wider question which will require to be answered first: Is it necessary for a corporation to contract under seal?

The learned authors of *Addison's Law of Contracts*, 11th Ed. 373, state the common law position in this respect: "All contracts of importance entered into by corporations must, with some exceptions presently noted, be made under the common seal of the body corporate, and in the corporate name." The exceptions referred to in this statement are perhaps best set out in *Salmond and Winfield's Law of Contracts*, 487–490. Briefly summarized they are:

(*i*) Matters of small importance, frequent recurrence, or urgent necessity. The statement of Lord Denman, C.J., that the basis of this exception is "convenience amounting almost to necessity" made in *Church* v. *Imperial Gas Light Co.*, (1838) 6 Ad. and E. 846, 861, is oft quoted.

(*ii*) Contracts of a trading corporation if they relate to the objects of a trading corporation and are not inconsistent with its regulations.

(*iii*) Where the whole consideration has been executed in a contract necessary for giving effect to the purposes of the corporation, which has accepted the executed consideration. The corporation is then liable subject to the restriction hereinafter noted.

(*iv*) If the other party to the contract has received the benefit of the consideration moving from the corporation, that party is bound, though the contract is not under seal.

(*v*) If the other party to a contract has done enough of what he has agreed to do to amount to part performance, the corporation is bound, though the contract lacks its seal. This, of course, is bound up with the equitable doctrine of part performance.

In the light of these statements, then, does the contract in this case require to be under seal or does it fall within any of the foregoing exceptions? Subject to the restriction still to be mentioned, it clearly does not require to be under seal as it falls within the class of exception numbered (*iii*). Brice very carefully considers all the authorities on this point and summarizes his findings in *Brice on Corporations*, 3rd Ed. 549: "A corporation is always liable in respect of an informal executed contract of which it has received the benefit." The case which firmly established this rule in English law is *Lawford* v. *Billericay Rural District Council*, [1903] 1 K.B. 772. The defendants in this case were held liable to an engineer, who had prepared a report and plans

in connection with a sewage scheme projected by the defendants. Vaughan-Williams, L.J., at page 784, put the liability of the corporation "on an implied contract arising from an executed consideration and acceptance of the benefit of the contract." This, from a scientific point of view, denies any validity to the contract, the plinth upon which liability rests.

The Supreme Court of New Zealand seems to have carried this reasoning a step further. In *Tubbs* v. *Auckland University College Council*, (1907) 27 N.Z.L.R. 149, Denniston, J., held that the plaintiff was entitled to damages on the breach of an executory contract not under seal. The plaintiff was appointed to a Chair at the University and had a contract with the Council for five years' employment. This contract was under the Council's seal but when the period terminated the plaintiff continued in his position for eight further years, and was then summarily dismissed. In allowing damages the Court necessarily acknowledged that there was an actual contract between the parties which was effective.

There is, however, an important exception to the rule of law laid down by Brice. It has been established that, if there is a mandatory direction as to sealing or any other formality such as writing or signature by specified persons contained in the statute under which the corporation is constituted, then the rule as laid down by Brice and as established by *Lawford's* case does not apply. In this connection it will be necessary to consider three cases: *Hunt* v. *Wimbledon Local Board*, (1878) 4 C.P.D. 48; *Young* v. *Mayor &c., of Royal Leamington Spa*, (1883) 8 App. Cas. 517, and *Reynolds* v. *Nelson Harbour Board*, (1904) 23 N.Z.L.R. 965. The two English cases were decided upon a consideration of the special provisions of the English Public Health Act, 1875. The relevant sections of this Act were:

> 173. Any local authority may enter into any contract necessary for carrying this Act into execution.
> 174. (1) Every contract made by an authority whereof the value or amount exceeds £50 shall be in writing, and sealed with the common seal of such authority.

In *Hunt's* case the surveyor of the Board was authorized to prepare plans and drawings for the offices which the Board proposed to erect. The plaintiff prepared these plans which were accepted and ratified by the Board and tenders were called. This action was an action for payment for labour done and money paid by the plaintiff for the defendants. The jury found that, not only was the surveyor authorized by the Board to employ the plaintiff, but that his acts in so doing were subsequently ratified by the Board, although not under the seal of the Board. The action failed because the local body was bound by the requirements of the Public Health Act, 1875, which I have quoted above, and there was no contract under the seal of the Board.

In *Young and Co.* v. *Mayor &c., of Royal Leamington Spa*, *Hunt's* case was considered and expressly approved. In this case all the authorities on this point up to 1883 were before the House of Lords for consideration. The decision was that s. 174 of the Public Health Act, 1875, was obligatory, not directory or permissive, and that it will not help the plaintiff at all that the urban authority has taken the benefit of an executed contract. Lord Bramwell's decision quoted at page 528 is emphatic. "The Legislature has," he says, "made provision for the protection of ratepayers, shareholders and others who must act through the agency of a representative body, by requiring the observance of certain solemnities and formalities which involve deliberation and reflection . . . It continually happens that carelessness and indifference on the one side, and the greed of gain on the other, cause a disgregard of these safeguards, and improvident engagements are entered into . . . The decision may be hard in this case on the plaintiffs, who may not have known the law. They and others must be taught it, which can only be done by its enforcement."

In the New Zealand case, *Reynolds* v. *Nelson Harbour Board*, (1904) 23 N.Z.L.R. 965, these two English authorities were followed and at the same time *Lawford's* case was distinguished. The facts in *Reynolds'* case were: The Nelson Harbour Board by a series of resolutions which were communicated to the plaintiff by letter accepted and paid for work done by the plaintiff in drawing up plans and specifications for alterations to the Nelson Harbour. The Board let contracts for the construction of the necessary plant which contained a clause to the effect that payment should be made on the approval and certificate of the engineer and defined the engineer as meaning the plaintiff. A dispute arose and Reynolds brought an action claiming a balance due for work done by him. The jury found that the plaintiff was entitled to recover a substantial amount. Decision, however, was reserved and a special case stated for the Court of Appeal.

It was decided by the Court of Appeal that as there was no express contract under seal of the Board there was a bar to the plaintiff's right of action whether this was founded on contract or *quantum meruit*, by virtue of the Harbours Act, 1878. The relevant sections of that Act, namely ss. 65 and 66, are summarized in the judgment of Stout, C.J., at page 977. Section 65 gives the Board authority to enter into any contracts necessary for the purpose of carrying out the objects for which the Board was constituted. Section 66 thereafter commences: "Every such contract shall be in writing . . ." These sections were held to be mandatory. Chapman, J., at page 1002 puts this decision thus: "As I interpret ss. 65 and 66 of the Harbours Act, 1878, *Young and Co.* v. *Mayor &c., of Royal Leamington Spa* governs the case, even though the defendant Board has had the benefit of the plaintiff's work."

Thus the Court of Appeal, holding that these sections were mandatory and not merely permissive, followed the House of Lords' decision in *Young's* case and distinguished *Lawford's* case, on the grounds that the Local Government Act, under which Rural Councils were created, contained no provision requiring contracts exceeding a certain amount to be under seal or to be executed with any prescribed formalities. Again, all the Judges commented upon the probable harshness of a "statutory" defence such as was relied upon by the Nelson Harbour Board in this case; but Stout, C.J., pointed out in his judgment at page 985: "It is for the legislature to determine whether the benefits derived from enforcing a general rule are or are not too dearly purchased by occasional hardships. A Court of law has only to inquire, what has the legislature thought fit to enact?"

The question now is, how do these decisions apply to the facts now under consideration?

Y. in the present case is a statutory body with statutory powers, having been duly constituted under the Municipal Corporations Act, 1933. Section 154 of that Act is to the following effect:

1. Any contract which, if made by private persons must be by deed, shall, if made by the corporation, be in writing and under seal of the corporation.

2. Any contract which, if made by private persons must be in writing, shall be made under the seal of the corporation or signed by two members of the council on behalf and at the direction of the council.

3. The corporation may, in cases where private persons can make contracts verbally, make such verbal contracts, provided the amount involved does not exceed £20.

4. A contract is not to be invalid if it is made in pursuance of a resolution of the council.

In my submission, these provisions can not be distinguished from the provisions which have been quoted above from the English Public Health Act, 1875, and our own Harbours Act, 1878. In the cases which have been quoted based on these acts, the sections requiring certain formalities in all the contracts of the corporate body were held to be mandatory, not merely permissive. I submit, therefore, that s. 154 of the Municipal Corporations Act, 1933, is mandatory and that the present case is governed by the decisions of the House of Lords in *Young* v. *Mayor &c., of Royal Leamington Spa*, and of the New Zealand Court of Appeal in *Reynolds* v. *Nelson Harbour Board*.

I submit that there is no contract between X. and the corporate body Y., under which Y. would be liable to pay X. for the goods and services in question at the rate which had existed under the previous contract: nor is it liable to pay for them at any other rate.

THE MORTGAGEE'S SONG.

My Auntie with a mortgage
And a mortgagor was blessed;
She loved the twain
With might and main,
But loved the mortgage best.
She cherished it and fostered it
With tender care and pride,
But when she tried to call it up
The mortgagor replied:
"*Unhappy woman, have you sought*
The leave of the appropriate Court
Prescribed in the Extension Regulations?
Have you served, oh mortgagee,
A notice under Section Three,
And lodged originating applications?
Have you duly certified
The mortgagor has not applied
Under the Act for rehabilitation?
Your plots and machinations halt—
For he can prove that his default
Is due to the financial situation.
Desist, and save yourself expense;
Go, wretched woman, get thee hence!"

My Auntie took her mortgage
And her courage in her hand:
And said: "*Ha ha!*
The Registrar
Will sell the mortgaged land!"
The Registrar with gracious bow
Invited her inside,
But when she said: "*Conduct the sale,*"
The Registrar replied:
"*Unhappy woman, have you sought*
The aid of the appropriate Court
Prescribed in the Extension Regulations?
Have you served, oh mortgagee,
A notice under Section Three,
And lodged originating applications?
Have you duly certified
The mortgagor has not applied
Under the Act for rehabilitation?
Your plots and machinations halt—
For he can prove that his default
Is due to the financial situation.
Desist, and save yourself expense;
Go, wretched woman, get thee hence!"

My Auntie was a moral soul,
And kind as anything;
In many shires
She sang in choirs
And places where they sing;
But when she came to Heaven,
And tried to get inside,
St. Peter closed the pearly gates,
And angel voices cried:
"*Unhappy woman, have you sought*
The aid of the appropriate Court
Prescribed in the Extension Regulations?
Have you served, oh mortgagee,
A notice under Section Three,
And lodged originating applications?
Have you duly certified
The mortgagor has not applied
Under the Act for rehabilitation?
Your plots and machinations halt—
For he can prove that his default
Is due to the financial situation.
Desist, and save yourself expense;
Go, wretched woman, get thee hence!"

—RONALD L. MEEK, LL.M.

The Jury's Job.—Registrar: (to Irish prisoner) "How say you, are you guilty or not guilty?"

Pat: "Ah, sure now, isn't that what the jury's put there to find out?"

"Look Me in the Face."—It is related how, during the trial of Glengarry in Scotland, for murder committed in the course of a duel, a lady of singular beauty was among the witnesses. As she entered the witness-box, veiled, the Judge, Lord Eskgrove, before administering the oath to her—that being in Scotland, the duty of the presiding Judge—gave her this explanation of her duty: "Young woman, you are now to consider yourself as in the presence of Almighty God, and of this High Court. Lift up your veil, throw off all your modesty, and look me in the face."

WHITHER LIBEL?

A Plea for Relaxation.

By C. C. AIKMAN.

Language plays an essential part in the structure of social evolution. For the individual it affords a means of self-expression, for society it is a bond, a means of crystallizing knowledge, a powerful force for common understanding. But it follows that if language is to be an effective instrument of social evolution it must be untrammelled; progress can become a reality only if there is freedom for all to express and discuss contributions to the world of thought and ideals. To-day, when freedom of expression and discussion is in so many countries of the world waging a losing battle against totalitarianism, we remain oblivious to the fact that our law of libel and slander is a restriction on that freedom which is very real and affects us every day of our lives. In no other branch of our law has there been such a singular failure to keep pace with the heightened tempo of modern life. Such things as the modern press, the radio, the cinema and the near prospect of television render inadequate those rules which are ours as a legacy from generations whose conditions of life were so different. There are numerous facets to the shortcomings of the present law, but this article is more particularly devoted to a consideration of the law of libel (as distinct from the law of slander) in so far as it operates as a restraint on freedom of expression and discussion.

So vague and uncertain is the law of libel that a very small percentage of the cases in which claims are made actually appear before the Courts. A defendant, perturbed at the expense involved in litigation which offers so little prospect of success, will usually settle the matter before legal proceedings have been commenced. This attitude has lead to an enormous number of frivilous and vexatious claims, made for no other purpose than "gold-digging." However, should a claim progress so far as a hearing, the defendant, apart from the denial that he was responsible for the publication or that the remark was libellous, has, generally speaking, three possible defences.

A plea of justification requires that the defendant prove that the whole of the defamatory matter is substantially true. It must be established by legally admissible evidence (in Courts which are bound by exceedingly strict and complicated rules as to what is admissible evidence and what is not) that the words complained of are true not merely in their literal and primary meaning, but in their "innuendo," that is, their implied or secondary meaning if any. To establish the plea presents in most cases insurmountable difficulties, for it is very possible to make a statement which you honestly believe to be true and which carries conviction to your audience, leaving no reasonable doubt in any man's mind as to its accuracy, and yet you may be unable to prove to the satisfaction of the Court the fact that such statement is true. Our defendant may then find himself faced with a bill for damages inflamed by his attempt to justify.

But suppose the defence of fair comment is chosen? This defence involves proof that the publication complained of consisted of comment on a matter of public importance and that the comment was "fair." Such a defence would appear to provide sufficient scope for freedom of discussion, but this is not the case. First, if the alleged libel deals (as it usually must) with matters of fact, it involves the defendant in the same burden of proof as a plea of justification. Secondly, it is for the jury to determine whether the comment represents a fair and honest expression of the views of the defendant. However, juries are only human; they tend to represent the ordinary point of view, and since the protection of freedom of discussion is, of course, really the protection of freedom of expression of unpopular points of view (the popular ones needing no protection) the temptations to the jury to find that an expression of opinion, with which they disagree fundamentally, is something which "no fair man" would write, is overwhelming. Again, the scope of fair comment—*i.e.*, matters of public importance—is broad, but not broad enough. For instance, the law does not regard it of public importance that there should be comment on a merchant who puts forth a product, even though from the social view-point general comment on his product might be immeasurably more important than a critic's reaction to a play. There is no sacrosanct quality about tooth paste, tonics, or patent foods, which should entitle them to greater immunity from comment than the books of D. H. Lawrence or Picasso's paintings.

A third defence, that of privilege, absolute or qualified, is not only limited in its scope but is far from satisfactory, especially in the domain of qualified privilege. The Judge is guided by no clear rules as to when qualified privilege exists. Also the defence may be defeated by showing "malice," which in this particular sense requires exact definition, but in effect is implied if the words complained of tend to bring any person into disrepute. Surely there are some facts of such public moment that they should be published without regard for the reputation of any particular person.

This inadequate analysis of the chief defences available in the law of libel makes it clear that the law must operate as a severe and too rigid a check upon the publication of unpopular opinions, or strong criticism of prominent persons and existing institutions or facts which it is not desired that the public should know. Admittedly, the press, for instance, tells us a great many things that everybody knows and a great many irrelevant and frivolous details about public figures—but it very seldom or ever tells significant facts about them to their disadvantage. It is often impossible to criticize a system, an industry or a social evil without the gravest danger of being held liable in damages for libelling some person or company prominent in the working of the system or the management of the industry or interested in the exploitation or control of the evil. The defence of fair comment, in those cases of the most vital social importance where popular prejudice or passion is involved, tends to disappear altogether.

Of the concrete results of the law of libel, Mr. D. N. Pritt, K.C., in an article in the *Political Quarterly* (1935), has to say :

> Every publisher and most politicians could tell of countless books, soberly and honestly written on a basis of facts not really open to doubt, that have been withheld from publication for fear of libel actions, of many more which have had passage after passage toned down or omitted from the same fear, of some even planned but never written because it is clear that they could not find a publisher. These are the killed, wounded and missing in the unequal fight for free criticism . . .

Once it is admitted that the present law of libel requires amendment the question presents itself as to the direction which proposed amendments should take. The more we modify our libel laws to permit complete freedom of discussion the more do we intrude upon the right of privacy of the individual—the benefits of free speech flow not to man but to mankind. Should we strive to safeguard the individual or to promote the common good ? Should we attempt a compromise between the two ? Mr. Pritt (*op. cit.*) suggests that by using as a basis the present law relating to slander and " slander of title " it would be comparatively easy to achieve amendments which would make discussion substantially easier. Such a compromise, for so it is, is perhaps the step the law will next take, but it is suggested that the time may come when compromise will be eschewed and the individual will forego his insularity in favour of complete freedom of discussion. The forum of community-reaction will take the place of Judge and jury and man will ultimately develop the capacity of living his inner life alone with faith in his own integrity and the conviction that his way of life is right. Only thus will we achieve a maximum of freedom of expression and discussion.

ACTS PASSED AND IN OPERATION.

PUBLIC ACTS.

No. 12. Thames Borough Commissioner Amendment Act, 1940 (August 30).

No. 13. Reserves and Other Lands Disposal Act, 1940 (August 30).

No. 14. Housing Amendment Act, 1940 (August 30).

No. 15. Carriage by Air Act, 1940 (August 30).

No. 16. Local Legislation Act, 1940 (August 30).

No. 17. Health Amendment Act, 1940 (August 30).

No. 18. Statutes Amendment Act, 1940 (August 30).

No. 19. Finance Act (No. 2), 1940 (August 30).

LOCAL ACTS.

No. 1. Greymouth Harbour Board Loan Act, 1940 (August 30).

No. 2. Waitara Borough Empowering Act, 1940 (August 30).

No. 3. Invercargill City Council Tramway Department Fund Empowering Act, 1940 (August 30).

No. 4. Wellington City Empowering and Amendment Act, 1940 (August 30).

RULES AND REGULATIONS.

Emergency Regulations Act, 1939. National Service Emergency Regulations, 1940. Amendment No. 1. August 22, 1940. No. 1940/186.

Emergency Regulations Act, 1939. Emergency Precautions Regulations, 1940. August 22, 1940. No. 1940/187.

Emergency Regulations Act, 1939. Emergency Reserve Corps Regulations, 1940. August 22, 1940. No. 1940/188.

Post and Telegraph Act, 1928. Telegraph Regulations, 1939. Amendment No. 3. August 22, 1940. No. 1940/190.

Primary Industries Emergency Regulations, 1939. Dairy Supply Control Order, 1940. August 22, 1940. No. 1940/191.

Air Force Act, 1937. Royal New Zealand Air Force Regulations, 1938. Amendment No. 6. August 22, 1940. No. 1940/192.

Fisheries Act, 1908. Trout-fishing (North Canterbury) Regulations, 1937, No. 2. Amendment No. 3. August 22, 1940. No. 1940/193.

Control of Prices Emergency Regulations, 1939. Price Order No. 9. August 22, 1940. No. 1940/194.

Orchard and Garden Diseases Act, 1928. New-Zealand-grown Fruit Regulations, 1940. August 22, 1940, No. 1940/195.

Patriotic Purposes Emergency Regulations, 1939. Exempting certain Patriotic Purposes from the Patriotic Purposes Emergency Regulations, 1939. August 22, 1940. No. 1940/196.

Labour Legislation Emergency Regulations, 1940. Northern, Taranaki, Wellington, Canterbury, and Otago and Southland Tinsmithing, Coppersmithing, and Sheet-metal Working (Dairying Industry) Labour Legislation Suspension Order, 1940. August 22, 1940. No. 1940/197.

Labour Legislation Emergency Regulations, 1940. Taranaki, Wellington, Canterbury, and Otago and Southland Tinsmithing, Coppersmithing, and Sheet-metal Working (Dairying Industry) Labour Legislation Suspension Order, 1940. August 22, 1940. No. 1940/198.

Air Navigation Act, 1931. Air Navigation Regulations, 1933. Amendment No. 8. August 22, 1940. No. 1940/199.

Customs Act, 1913. Customs Import Prohibition Order, 1940. No. 1. August 26, 1940. No. 1940/200.

Immigration Restriction Act, 1908. Immigration Restriction Regulations, 1930. Amendment No. 3. August 26, 1940. No. 1940/201.

Post and Telegraph Act, 1928. Telephone Amending Regulations, 1940. No. 3. August 29, 1940. No. 1940/202.

Fisheries Act, 1908. Fresh-water Fisheries (Southland) Regulations, 1937. Amendment No. 3. August 29, 1940. No. 1940/203.

Emergency Regulations Act, 1939. Arrest (Armed Forces) Emergency Regulations, 1940. August 29, 1940. No. 1940/204.

Emergency Regulations Act, 1939. Change of Name Emergency Regulations, 1939. Amendment No. 2. August 29, 1940. No. 1940/205.

Emergency Regulations Act, 1939. Transport Legislation Emergency Regulations, 1940. August 29, 1940. No. 1940/206.

Pharmacy Act, 1939. Pharmacy Board Election Regulations, 1940. August 29, 1940. No. 1940/207.

Emergency Regulations Act, 1939. Suspension of Apprenticeship Emergency Regulations, 1939. Amendment No. 1. August 29, 1940. No. 1940/208.

Board of Trade Act, 1919. Board of Trade (Fertilizer-price) Regulations, 1938. Amendment No. 1. August 29, 1940. No. 1940/209.

Control of Prices Emergency Regulations, 1939. Price Order No. 10. August 29, 1940. No. 1940/210.

Emergency Regulations Act, 1939. Fruit-export Control Board Emergency Regulations, 1940. August 29, 1940. No. 1940/211.